

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

DATE: July 15, 2005

REGULATION FILE: RH03028690

SUBJECT OF PROPOSED RULEMAKING

The California Insurance Commissioner, John Garamendi ("Commissioner") proposes to amend the regulations described below after considering comments from the public. The Commissioner proposes to revise California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article 6.5 Sections 2186.1, 2188.2, 2188.6, and 2188.8 (the "Prelicensing and Continuing Education Regulations".)

A hearing will be held regarding the proposed amendments to the regulations governing prelicensing and continuing education: specifically, the proposed regulatory changes concern approval of combination courses for continuing education credit, the addition of an ethics requirement to the continuing education curriculum, a requirement that prelicensing rosters must be submitted within ten (10) business days of completion of the course and a requirement that course rosters must be submitted through an electronic filing method.

AUTHORITY AND REFERENCE

California Insurance Code Section 1749.7 provides the authority under which the regulations are proposed. The proposed regulations will implement, interpret, and make specific the provisions of California Insurance Code (CIC), Division 1, Part 2, Chapter 5, Article 13.5, Sections 1749, 1749.1, 1749.2, 1749.3, 1749.31, 1749.4, 1749.5, 1749.6, 1749.8 and 10234.93(a)(4).

PUBLIC HEARING

Notice is hereby given that a public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to these regulations as follows:

Date and time:

August 31, 2005, at 10:00 am

The hearing will continue until all testimony has been completed or 4:00 p.m., whichever is earlier.

Location: California Department of Insurance
Hearing Room, 22nd Floor
45 Fremont Street
San Francisco, California 94105

PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at **5:00 p.m. on August 31, 2005**. Please direct all written comments to the following contact person:

Gayle L. Freidson, Staff Counsel
California Department of Insurance
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Telephone: (415) 538.4418
Fax: (415)904.5490

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

Karen Switzer, Associate Analyst Policy Unit
California Department of Insurance
320 Capitol Mall
Sacramento, CA 95814
Telephone: (916) 492.3014

****Outside of envelope must be marked personal & confidential****

DEADLINE FOR WRITTEN COMMENTS

All written materials must be received by the Insurance Commissioner, c/o Gayle L. Freidson at the address listed above, no later than **5:00 p.m. on August 31, 2005**. Any written materials received after that time will not be considered.

COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: freidsong@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Gayle Freidson and sent to the following facsimile number: (415) 904.5490. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

ACCESS TO HEARING ROOMS

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person (listed above) for these hearings in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of Subchapter 4.5, Title 10, of the California Code of Regulations, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address, in order to inquire about the appropriate procedures:

California Department of Insurance
Office of the Public Advisor
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST

Summary of Existing Law and Policy Statement Overview

California Insurance Code Sections 1749.3 and 1749.31 set forth the minimum number of continuing education hours required for licensed life agents, fire and casualty broker agents, and personal lines broker-agents. Section 1749.4 enumerates specific continuing education requirements, including courses or programs of instruction that meet the standards, as well as classroom hour's equivalency. Additionally, Section 1749.8 specifies, among other things, the training requirements of life agents for selling annuities. Finally, Section 10234.93(a)(4) states that every insurer of long-term care in California shall provide specific training pursuant to Sections 1749.3 and 1749.4. The Commissioner has previously promulgated regulations found at California Code of Regulations, Title 10, Chapter 5, Subchapter 1, Article 6.5, Sections 2186.1, 2188.2, 2188.6, and 2188.8 which provide specific continuing education curriculum requirements for existing licensees and education providers pursuant to the California Insurance Code's prelicensing and continuing education statutes, Sections 1749 et seq.

After working with the existing regulations for many years, it has become apparent that additional modifications are necessary as follows:

- 1) Approval of combination courses for continuing education credit for life agents, fire and casualty broker-agents, and/or personal lines broker-agent licensees.
- 2) Adding a mandatory ethics requirement to the continuing education curriculum for life agents, fire and casualty broker-agents, and/or personal lines broker-agent licensees.
- 3) Adding requirements that prelicensing rosters must be submitted within ten (10) business days of completion of the course and course rosters must be submitted through an electronic filing method.
- 4) Adding or deleting language for reasons of grammar or clarity.
- 5) Reorganizing the subdivisions so that they are easier to understand and use.

The proposed regulations are in plain English except to the extent that technical terms could not be avoided. Any unavoidable technical terms are defined in plain English.

Life agents, fire and casualty broker-agents, and personal lines broker-agent licensees are required to complete continuing education hours approved by the Commissioner during each renewal period. Currently courses are limited to either contact or non-contact (self-study) formats. Due to advances in technology since these regulations were originally adopted, there is now an opportunity for new combination course formats such as instructor-led, on-line courses and web-based conferences. The existing regulations prohibit approval of combination courses (contact and self-study combined) for continuing education credit.

In December 2002, the National Association of Insurance Commissioners (NAIC) adopted Uniform Resident Licensing Standards including standards for continuing education requirements. The NAIC standard requires twenty-four hours of continuing education for all lines of authority with three (3) of the twenty-four hours covering ethics. Therefore, to ensure that California's continuing education standards equal or exceed the national standard, the proposed amendments, which include an ethics requirement, are necessary. These regulations would mandate these changes and have been approved by the Curriculum Board of the Department of Insurance ("Department"). It is necessary to the Department's purpose of ensuring that life agents, fire and casualty broker-agents and personal lines broker-agent licensees continue to be educated in matters that deal with individual character and personal characteristics such as honesty, integrity and professionalism in the insurance industry.

Existing law requires that education providers submit to the Department rosters of students given a certificate of completion within thirty (30) days of course completion and that a roster be submitted on a Provider Roster form, or other form meeting certain requirements. With the Department's activation of its online application and many of the Department's functions becoming automated, the receipt of the Prelicensing Rosters facilitates the amended regulation's requirement to submit rosters electronically. The new ten (10) day requirement pertaining to Prelicensing Certificates will eliminate the requirement that students bring or mail in their certificate, which in turn, will allow the Department to issue an applicant's license sooner. The intent in shortening the reporting period for prelicensing education is to move to a paperless system using the Online Application, which will allow more accurate information to be collected. In the paperless process, the submission of the online roster will assist those students who pass the qualifying examination in a timely manner by having the prelicensing roster information on file. The programs are already in place and being used by some

education providers. Providers can manually key the rosters using the Education Provider Online Program available on the Department's Web site with a user ID and password.

Effect of Proposed Action

The major effects of the regulations are as follows:

Section 2186.1 - Definitions

Major amendments to this section include a broader definition of "classroom" to include internet chat rooms, or other electronic devices used to accommodate technological changes. Additionally, the definition of "course" has been amended to include a "combination course" and a requirement that a student must complete the self-directed portion of the course prior to the contact course portion is added. A caveat to the definition of "approved course" has been included to state that the Commissioner may reduce the hours requested if a course fails to meet all of the requirements. The definition of "original signature" has been amended and now defines the term "signature" as a written form of identification such as an ink signature or an electronic log-in/log-out assigned number. Definitions of "electronic signature" and "electronic filing" are now included in keeping with the advancement of technology and increased use of computers in our daily lives. Section 2186.1 is detailed and specific, and it allows the Department to effectively administer California Insurance Code Sections 1749 et seq. It is necessary to the Department's purpose of ensuring that life agents, fire and casualty broker-agents, and personal lines broker-agent licensees continue to be educated in order to maintain their licenses.

Section 2188.2 - Course Approval

Major amendments to this section include the statement that combination courses do qualify for continuing education credit. Additionally, combination courses having the same content in both the self-directed and contact portions of the course may not be approved and may be subject to a reduction in requested hours. Section 2188.2 is detailed and specific, and it allows the Department to effectively administer California Insurance Code Sections 1749 et seq. It is necessary to the Department's purpose of ensuring that life agents, fire and casualty broker-agents, and personal lines broker-agent licensees continue to be educated in order to maintain their licenses.

Section 2188.6 - Successful Completion of Continuing Education Courses

Major amendments to this section include the addition of a mandatory ethics continuing education requirement, consisting of courses, programs of instruction, or seminars which follow a prescribed outline and have been approved by the Commissioner. A life agent and/or fire and casualty broker-agent must complete four (4) hours on ethics per license term and a personal lines broker-agent must complete two (2) hours on ethics per license term. Additionally, ethics continuing education hours may not be carried forward to the next license term and no course can be taken for credit more than once within a two (2) year license term. Section 2188.6 is detailed and specific, and it allows the Department to effectively administer

California Insurance Code Sections 1749 et seq. It is necessary to the Department's purpose of ensuring that life agents, fire and casualty broker-agents and personal lines broker-agent licensees continue to be educated in matters that deal with individual character and personal characteristics such as honesty, integrity and professionalism in the insurance industry.

Section 2188.8 - Certificates of Completion

The word "training" has been added. This addition is necessary because of the training requirements set forth in California Insurance Code Sections 1749.8 and 10234.93(a)(4), referring to life agents who sell annuities and for those who sell long-term care insurance. Major amendments to this section set forth new requirements that a provider must follow with regard to the course roster, including submitting the prelicensing roster within ten (10) business days following the completion of the course and thirty (30) days for continuing education rosters. Submitting rosters through an electronic filing method is now required. Finally, submission of a typed hard copy form (446-13), [(Provider Roster) Rev. 8/01] must still contain the same minimum requirements but will only be accepted under special circumstances approved by the Department. Section 2188.8 is detailed and specific, and it allows the Department to effectively administer California Insurance Code Sections 1749 et seq. It is necessary to the Department's purpose of ensuring that education providers comply with specific requirements in the administration of prelicensing and continuing education courses.

MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING

The Commissioner has determined the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Commissioner has made an initial determination that the proposed regulations will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES

The Department is not aware of a significant cost impact that a private person or business would necessarily incur in reasonable compliance with the proposed action.

The Commissioner believes that the proposed regulations will not have a significant cost impact on private persons or businesses directly affected by them. To the extent that the proposed regulations do have an impact on the costs of private persons or businesses directly affected, the cost impact is a result of the Insurance Code sections being implemented, interpreted or made specific by the proposed regulations. The Commissioner invites all interested parties to comment on this issue.

IMPACT ON SMALL BUSINESS

The Commissioner has made an initial determination that the proposed amendments will not have a significant impact on small businesses. To the extent education providers qualify as small businesses, the offering of ethics courses and/or combination courses is not mandatory. In addition, the majority of the education providers are already utilizing the electronic filing procedure, which has been in place for some time.

The Commissioner has determined that the proposed amendments will not have a significant impact on small businesses, to the extent that the designated agents-brokers qualify as a small business. The new ethics continuing education requirement is part of, and not in addition to, the existing continuing education requirements. Additionally, taking a combination course is an option and is not mandatory. Thus, there will not be a significant impact on these small businesses.

FINDING OF NECESSITY

The Commissioner finds these amended regulations are necessary to implement changes, as well as provide clarification, to the current continuing education requirements beginning with Section 2186.1, and pursuant to CIC 1749.7 et seq.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matters proposed herein will have no significant effect on housing costs.

ALTERNATIVES

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective as and less burdensome to affected private persons than

the proposed regulations. The Commissioner invites public comment on alternatives to these regulations.

COMPARABLE FEDERAL LAW

There are no existing federal regulations or statutes comparable to the proposed regulations.

TEXT OF REGULATIONS, INITIAL STATEMENT OF REASONS AND FINAL STATEMENT OF REASONS

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed changes to the regulations. Upon **written or e-mailed** request, the initial statement of reasons will be made available for inspection and copying. Written requests for the initial statement of reasons or questions regarding this proceeding should be directed to the contact person listed above. Upon **written or e-mailed** request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, the express terms of the proposed action and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

WEBSITE POSTINGS

Documents concerning this proceeding are available on the Department's Website. To access them, go to <http://www.insurance.ca.gov>. Find near the end of the rightmost column, under the heading "Quick Links," the "Legal Information" link. Click it. On the "Legal Information" page, click on the "Proposed Regulations" link near the top of the page. When the "Search or Browse for Documents for Proposed Regulations" screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH03028690" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of the code section that the regulations implement ("1749.4"),

or search by keyword (“continuing education”, for example). Then, click on the “Submit” button to display links to the various filing documents.

To browse, click on the “Browse All Regulations” button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the “Prelicensing and Continuing Education Curriculum Regulation” link, and click it. Links to the documents associated with these regulations will then be displayed.

MODIFIED LANGUAGE

If the regulations adopted by the Department differ from those that have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.